

<sup>1</sup> 5 U.S.C. § 8101, *et seq.*

became aware of his condition and related it to his federal employment on April 19, 2005. Appellant attributed his hearing loss to prolonged exposure to noisy mechanical rooms, energy plants, and cooling equipment.

OWCP received appellant's employing establishment audiograms from 1991, 1993, 1999, 2008, 2009, 2012, 2015, 2017, and 2018.

Appellant submitted documents from Dr. Julie A. Gustafson, a Board-certified otolaryngologist. In an audiogram taken March 29, 2018, hearing losses were noted at the frequencies of 500, 1,000, 2,000, and 3,000 hertz (Hz). The left ear losses were recorded as 5, 5, 10, and 45 decibels (dBs) and the right ear losses were recorded as 10, 10, 15, and 25 dBs. In a narrative report of even date, Dr. Gustafson diagnosed bilateral noise-induced hearing loss and tinnitus. She opined that it was more probable than not that appellant had injurious industrial noise exposure in his work at the employing establishment. Dr. Gustafson explained that the audiogram revealed thresholds within normal limits from 250 to 2,000 Hz in both ears, then the right ear sloped to a mild loss by 4,000 Hz and dropped to an acoustic notch at a moderate-severe level at 6,000 Hz, regaining at 8,000 Hz. The left ear dropped to a mild hearing loss at 3,000 Hz, plateaued at 4,000 Hz, then dropped further to an acoustic notch at a moderate-severe level at 6,000 Hz, regaining at 8,000 Hz. Dr. Gustafson noted that word recognition thresholds were excellent in both ears at 100 percent on the right and 100 percent on the left. She found zero percent hearing impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup> Dr. Gustafson further indicated that, if a rating were allowed, she would recommend one percent impairment for tinnitus.

After obtaining information from both appellant and the employing establishment regarding his occupational noise exposure, OWCP prepared a May 31, 2018 statement of accepted facts (SOAF). It noted, that appellant worked as an air conditioning mechanic and that he had been exposed to noise from air conditioning units, water chillers, air handler units, motors, chilled water pumps, pneumatic air compressors, medical air compressors, medical vacuums, and other noisy equipment for 8 to 12 hours per day. OWCP also noted past noise exposure from appellant's service in the U.S. Army from 1974 to 1981 and from past nonfederal employment from 1982 to 1984. Nonemployment noise exposure included the annual use of a rototiller, and the use of a lawn mower and weed trimmer.

OWCP referred appellant for additional audiometric testing and a second-opinion examination by Dr. Jackson Holland, a Board-certified otolaryngologist. A June 14, 2018 audiogram noted losses at the frequencies of 500, 1,000, 2,000, and 3,000 Hz. The left ear losses were recorded as 10, 10, 10, and 45 dBs and the right ear losses were recorded as 10, 10, 10, and 30 dBs. In an accompanying report, Dr. Holland also noted appellant's diagnosed and family history of dilated cardiomyopathy, which raised the significant probability that appellant was dealing with a genetic autosomal dominant disorder. He noted that his experience with affected individuals displaying this syndrome is significant and that, over the past four years, appellant was the sixth individual evaluated in his office for hearing impairment providing a history of dilated cardiomyopathy. If, in fact, appellant had the chromosome 6 syndrome, Dr. Holland opined that his pattern of impairment was exceedingly mild, and from the prospective of progression of

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<sup>2</sup> 6<sup>th</sup> ed. 2009.

hearing impairment, likely highly favorable. He determined that the monaural hearing impairment of the left ear was zero percent and that the monaural hearing impairment of the right ear was zero percent, and the hearing loss was, thus, not ratable under the sixth edition of the A.M.A., *Guides*.

On August 14, 2018 OWCP accepted the claim for bilateral tinnitus and bilateral noise effects on inner ear. It further advised appellant that the record established that he would benefit from hearing aids.

On October 24, 2018 appellant filed a claim for a schedule award (Form CA-7).

On November 1, 2018 OWCP forwarded the case to its district medical adviser (DMA) to determine whether appellant had a permanent, employment-related hearing impairment.

In a report dated November 5, 2018, Dr. Jeffrey M. Israel, a Board-certified otolaryngologist, serving as a DMA, noted that appellant had served in the Federal Government from 1984. He reviewed the SOAF, and noted the types of noise and length of exposure. Based on the second opinion report from Dr. Holland, Dr. Israel determined that appellant did not have a ratable hearing impairment based on the June 14, 2018 audiogram. Specifically, he determined that the monaural hearing impairment of the left and right ears were zero percent and, thus, was not ratable under the sixth edition of the A.M.A., *Guides*. Dr. Israel also noted that appellant had a dilated cardiomyopathy sensorineural hearing loss syndrome, which could be contributing to the hearing loss. He concluded his report by suggesting authorization for hearing aids and that appellant undergo yearly audiograms and utilize noise protection for his ears.

By decision dated December 3, 2018, OWCP denied appellant's claim for a schedule award. It explained that, under the A.M.A., *Guides*, appellant's hearing loss was not sufficiently severe to be considered ratable for purposes of a schedule award.

### **LEGAL PRECEDENT**

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>3</sup> FECA, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>4</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>5</sup>

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<sup>3</sup> For complete loss of hearing of one ear, an employee shall receive 52 weeks' compensation. 5 U.S.C. § 8107(c)(13). For complete loss of hearing of both ears, an employee shall receive 200 weeks' compensation. *Id.*

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are added up and averaged.<sup>6</sup> Then, the “fence” of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dB result in no impairment in the ability to hear everyday speech under everyday conditions.<sup>7</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>8</sup> The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss, the lesser loss is multiplied by five, and then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>9</sup>

If tinnitus interferes with activities of daily living, including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation, and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss, warranting a schedule award.

In a June 14, 2018 report, Dr. Holland noted that audiogram findings for appellant’s right ear hearing losses at 500, 1,000, 2,000, and 3,000 Hz were 10, 10, 10, and 30 dBs, which totaled 60 dBs. Appellant’s left ear losses were 10, 10, 10, and 45 dBs, which totaled 75 dBs. The right ear hearing loss resulted in an average loss of 15 ( $60 \div 4$ ) dBs, and the left ear loss averaged 18.75 ( $75 \div 4$ ) dBs. After subtracting the 25 dB fence, both the right ear and left ear losses were reduced to negative numbers (-10 and -6.25, respectively). When multiplied by 1.5, the resulting monaural loss in each ear was zero percent. The June 14, 2018 audiogram results also showed zero percent binaural hearing impairment. In addition to the audiogram findings and the impairment opinion of Dr. Holland, the above-noted calculations were reviewed by and found to be accurate by the DMA, Dr. Israel, on November 5, 2018.

The Board finds that there is no current medical evidence of record supporting that appellant has ratable hearing loss under OWCP’s standardized procedures for rating hearing impairment. Although appellant has an employment-related hearing loss, it is not sufficiently

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<sup>6</sup> See Section 11.2, Hearing and Tinnitus, A.M.A., *Guides* 248-51 (6<sup>th</sup> ed. 2009).

<sup>7</sup> *Id.* at 250.

<sup>8</sup> *Id.* at 250-51.

<sup>9</sup> *Id.* at 251.

<sup>10</sup> *Id.* at 249.

severe to be ratable for schedule award purposes.<sup>11</sup> As the June 14, 2018 audiogram did not demonstrate that appellant's hearing loss was ratable, he is not entitled to a schedule award.<sup>12</sup>

Appellant may request a schedule award or increased schedule award at any time based on medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss, warranting a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> See *E.D.*, Docket No. 19-0256 (issued May 10, 2019); *B.E.*, Docket No. 18-1785 (issued April 1, 2019); *R.S.*, Docket No. 18-1524 (issued February 5, 2019).

<sup>12</sup> As appellant has no measurable binaural hearing impairment, an award for impairment due to tinnitus is unwarranted. See *supra* note 10.